No. 14969

United States Court of Appeals

For the Ninth Circuit

SANTOS QUADRA, *Appellant,*

vs.

QUEEN FISHERIES, INC., a corporation, and E. H. BENDIKSEN, doing business as E. H. BENDIKSEN CO., *Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

ZABEL & POTH
OSCAR A. ZABEL
PHILIP J. POTH
Attorneys for Appellant.

518 Fourth and Pike Building,
Seattle 1, Washington.

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STATEMENT OF JURISDICTION

This cause comes before this Honorable Court upon dismissal of plaintiff's complaint after a hearing upon the merits. The complaint was filed on the civil side in United States District Court for the Western District of Washington, Northern Division.

The case was heard by the Honorable William J. Lindberg, a Judge of the United States District Court for the Western District of Washington. Appellant has duly prosecuted his appeal to this Court from the judgment of dismissal.

JURISDICTION OF THE DISTRICT COURT

The jurisdiction of the District Court is granted by the provisions of Title 46 U.S.C.A., Sec. 688.

JURISDICTION OF THE COURT OF APPEALS

The jurisdiction of this Court is granted by the provisions of Title 28 U.S.C.A., Sec. 1291, which gives to the courts of appeal jurisdiction of all appeals from final decrees of district courts.

STATEMENT OF THE CASE

The ALASKA QUEEN is a self-propelled vessel of 297 net tons. She is powered as a twin-screw diesel. Three cargo holds, a weather deck, 'tween deck, and crew's quarters generally comprise the divisions inside her hull. A part of her hold space is taken up with cannery machinery. The rest of the hold space is used for transporting cargoes of canned salmon from Alaska to Seattle (R. 101-102, 103-104).

The vessel sailed from Seattle, Washington, to engage in the fishery trade for the 1953 fishing season. The purpose of the voyage was to catch fish and preserve them by use of the canning equipment carried aboard her. On the voyage north the ship was manned and operated by a master and crew consisting of a mate, two engineers, three deck hands, and a cook (R. 158).

The ALASKA QUEEN upon her arrival in Alaska was moored in navigable waters where she remained, fully manned and provisioned, while she engaged in the fishery trade which was the main purpose of her voyage (R. 103). In order to effectuate the objects of the voyage it became necessary to supplement the ship's personnel.

The plaintiff, Santo Quadra, was flown by air to Alaska where he joined the vessel for the fishing season. He lived in quarters provided for him aboard the ship and ate all his meals there. His duties were varied and all of them were directed towards the assistance of the ship in accomplishing the purposes of her voyage.

His duties consisted of cleaning the ship (R. 79), painting her hull and superstructure (R. 131), han-

dling her lines (R. 132), working her cargo (R. 34), and generally performing an ordinary seaman's duties about the vessel. In addition he butchered the fish that were brought aboard the vessel (R. 131).

On the day of his injury the appellant was ordered to go over the side of the ALASKA QUEEN and stow cases of salmon aboard a scow moored in navigable waters alongside her. While so engaged he sustained the injuries complained of.

Appellant contends that he is a seaman within the protection of the Jones Act, 46 U.S.C.A., Sec. 688. However, the court below made its conclusion of law as follows (R. 18)::

> "That the plaintiff herein is not a seaman or a member of the crew within the meaning of the Jones Act, but is an industrial worker and that his claim comes within the jurisdiction of the Alaska Workmen's Compensation Act, Section 43-3-1 of the Alaska Code of 1949."

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON

The appellant relies upon assignments of error contained in the Statement of Points Nos. 1, 2, 3 (R. 23).

SUMMARY OF ARGUMENT

All members of a ship's company are entitled to the same statutory protection. No distinction should be made between persons aboard primarily to "hand, reef, and steer," and others, who occupy a more menial status but nevertheless live aboard the ship and direct their efforts to its service and the accomplishment of the main purpose of the voyage.

ARGUMENT

Appellant directs this argument to all the assignments of error relied upon, which are as follows:

1. That the court committed reversible error in its entry of Findings of Fact, Conclusions of Law, and Judgment of Dismissal with prejudice of plaintiff's complaint;

2. The court committed reversible error in not entering the judgment in favor of plaintiff-appellant against the defendant-respondents as prayed for by plaintiff's complaint;

3. That the trial court committed reversible error in entering a Conclusion of Law that the plaintiff herein is not a seaman or a member of the crew within the meaning of the Jones Act, but is an industrial worker and comes within the jurisdiction of the Alaska Workmen's Compensation Act.

1. The appellant was aboard a vessel in navigation.

The record clearly shows that at all times that the appellant lived and worked aboard her, the ALASKA QUEEN was moored and operated in navigable waters. She was a ship in commission capable of being propelled under her own power and she was manned by a captain and crew. Furthermore, she was at all times engaged in the fishing trade—a strictly maritime pursuit. In view of the above facts the ALASKA QUEEN was plainly a vessel in navigation to the extent that persons employed aboard her and in her service were entitled to be classified as seamen. *Norton v. Warner Co.,* 321 U.S. 565, 64 S.Ct. 747, 88 L.Ed. 931; *The Showboat,* 47 F.2d 286.

Her voyage was from Seattle, Washington, to Alaska and back. The purpose of the voyage was to procure fish. In this the ALASKA QUEEN did not differ in aim and principle from any other fishing vessel. Point has been made in describing her as a "floating cannery." This characterization in no way altered her essential nature as a seagoing fishing vessel.

All fishing vessels which sail on protracted voyages must have some means of preserving the catch. The incident of the method used, whether it be by freezing, salting or canning is of no moment. The fact that the ALASKA QUEEN carried canning equipment aboard her in order to preserve her fish did not alter her status as a vessel in navigation.

2. The appellant was aboard the vessel as a member of her company and crew.

The court below found the plaintiff to be an "industrial worker." Overlooked by the court was the fact that the maritime law relating to workers in the fishing industry is of equal application everywhere. There is no special magic about Alaska waters that renders the status of mariners on their surface any different than those of California or the banks of Nova Scotia. The fact that the appellant was engaged for the most part in butchering the fish brought aboard his ship does not make him a land or shore worker—simply because fish are sometimes butchered and processed on shore installations. By such reasoning the ship's cook would be denied his maritime status because most of the world's cooking is done on land.

The fact that the appellant was employed as a "can-

nery worker'' instead of a ''deckhand'' did not alter his status aboard the vessel ALASKA QUEEN. He should be considered a seaman and crew member just as much as those aboard for the purpose of actually sailing the ALASKA QUEEN. The reason for this is that he was employed on the vessel to assist in the main purpose of the voyage, which was the canning of fish.

A case in point is *The Ocean Spray,* 4 Sawyer 105 (9th Cir. Rep.) Fed. Case 10412. Here a vessel enrolled and licensed for the fisheries sailed from San Francisco on a voyage to Alaska. At Victoria, B. C., 24 Indians were taken aboard to work as sealers. It was held that these Indians were mariners just as well as the American sailors aboard the ship because they were employed to help accomplish the main object of the voyage, which was the taking of seals, and upon their efforts depended the success of the voyage.

Another case in point from this jurisdiction is *The ZR-3,* 18 F.2d 122. This case is almost analogous on its facts with the case now before this Honorable Court. A vessel with salmon packing paraphernalia on board, went to the fishing grounds in Alaska. Here the libelants

> ''entered into a written contract to go to Pyramid Harbor, during the fishing season, at a stipulated wage, for the season.''

The libelants were held to be seamen and crew members, even though they were employed solely to salt and pack fish in barrels aboard the vessel. The court held that they were in that category because they were engaged in furthering the main purpose of the ship's voy-

age, even though they had nothing to do with its navigation, because—

> "clearly the main purpose of the voyage was to salt and pack fish."

Also, the rule has been stated in *Osland v. Star Fish & Oyster Co.,* 107 F.2d 113:

> "The term includes all those on board whose labor contributes to the main object in which the vessel is engaged."

In addition to assisting in the furtherance of the main object of the voyage which was to obtain a cargo of fish, the record is clear that the appellant performed many other tasks which were the ordinary work of a seaman. He cleaned the ship, he painted it, and he handled its lines. At the very moment of his injury he was engaged in the wholly maritime occupation of loading a barge in navigable water. *International Stevedoring Co. v. Haverty,* 272 U.S. 50.

This fact alone placed him beyond the reach of the Territorial compensation laws for any injury sustained while he was so engaged. The court ruled on this very point in *Chappell v. C. D. Johnson Lumber Corp.,* 112 F.Supp. 625 (D. Oregon), as follows:

> "In my opinion the loading of a barge of 18 tons or more in navigable water is maritime in nature and injuries of a workman employed on such a barge are likewise maritime, and the rights and liabilities of the parties in connection therewith are clearly within the admiralty jurisdiction and *outside the reach of State compensation laws.*" (Emphasis ours)

The Alaska Compensation Act is of the same rank as a State compensation law.

The Ninth Circuit, in reviewing this case (216 F.2d 873), said the following:

> "Here as below appellant, relying on *Davis v. Dept. of Labor & Industries,* 317 U.S. 249, contends that the operation in which he was injured falls within the twilight zone between State and Federal jurisdiction. We are not able to agree. The facts as submitted disclose a typical situation of maritime injury."

The court below was evidently influenced by its finding that the appellant was not directly supervised by the master of the vessel (R. 17). This fact should have no significance whatsoever, because all who live and work aboard a ship in navigation are subject to the authority of its captain. The test of direct supervision on modern type vessels is no test at all, for necessity requires that all of them be departmentalized. The firemen, wipers, oilers and water-tenders are not under the direct supervision of the master but are supervised by the chief engineer. The cooks and stewards are likewise under the direction of the chief steward. To say that a person is not a member of a ship's company because he is not in the ship's deck department where the captain deals with him directly, constitutes the raising of an unrecognized distinction.

Issue has also been made of the fact that the ALASKA QUEEN was moored along the shore and drew a supply of water from the land. Neither fact should be accorded any weight. All vessels must of necessity tie up to the shore from time to time. All their supplies must come from the land. A vessel in navigation does not lose its identity because it ties up at a dock. Neither does it be-

come a land object because it takes aboard fresh water from the shore rather than salt water from the sea.

A case in point is *Jeffrey v. Henderson Bros.,* 193 F. 2d 589. There coal miners were employed aboard a boat to wash coal. The coal came from two refuse gob piles, which came from mines in the vicinity, and had been placed along the river bank. The vessel tied to the bank and the men washed and cleaned the coal. They were held to be crew members. The court quoted:

> "It is now well settled that all persons employed on a vessel to assist in the main purpose in which she is engaged are entitled to a lien for wages. So it has been held that clerks, carpenters, chambermaids, cooks, stewards and waiters are so entitled. Dest. Shipp & Adm., Sec. 173, and cases there cited. The statute above referred to which declares that persons employed 'in any capacity' upon vessels shall be deemed 'seamen' seems conclusive upon this point."

3. The appellant is entitled to the same protection as the other members of the ship's company.

All the persons who lived and worked aboard the Alaska Queen during the 1953 fishing voyage were exposed to the same hazards and perils. The court below mistakenly attempted to distinguish between members of the ship's company solely on the basis of their duties aboard the vessel. The protection afforded by the Jones Act, 46 U.S.C., §688, extends equally to every member of the ship's company.

The fact that a deck-hand stood watch while the appellant butchered or stowed cases of salmon is no cause for discriminating against the one who did the hard-

est, most menial work. Literally they were in the same boat together. A disaster striking the ship such as a fire or explosion would not pick and choose between them on such an arbitrary basis. This exact point was ruled on in *Wilkes, et al., v. Mississippi River Sand and Gravel Co.,* 202 F.2d 383, certiorari denied, 346 U.S. 817, 98 L.Ed. 344, 74 S.Ct. 29. Here the court said:

> " * * * In our judgment, an employer who hires men to work on the water on vessels engaged in navigation and permits them to have such a permanent connection with the vessel as to expose them to the same hazards of marine service as those shared by all aboard should not be permitted, by merely restricting their duties or by adopting particular nomenclature as descriptive of their tasks, to limit his liability to such employees, in the event of disability or death alleged to have been caused by the negligence of the employer, to the extent prescribed by the Longshoremen's Act."

CONCLUSION

Upon the basis of the authorities cited herein we ask that the Court find that the appellant is entitled to maintain his suit under the Jones Act, 46 U.S.C.A., §688, that the decree of the District Court be reversed and the suit remanded to the court from which it arose with instructions for further proceedings in accordance with the opinion of this Court.

Respectfully submitted,

ZABEL & POTH
By PHILIP J. POTH
Attorneys for Appellant.